

REMARKS

In response to the Office Action dated August 29, 2007, the Applicant has amended claims 1, 10, 24 and 33. Claims 1-17, 24-27 and 33-36 are in the case. Reexamination and reconsideration of the application, as amended, are requested.

The Office Action rejected claims 1-17, 24-26 and 33-36 under 35 U.S.C. 103(a) as allegedly being unpatentable over Kusano et al. (U.S. Patent No. 2003/0074421) in view of Jaishima et al. (U.S. Patent No. 6,671,807). The Office Action rejected claim 27 under 35 U.S.C. 103(a) as allegedly being unpatentable over Kusano et al. in view of Official Notice.

The Applicant respectfully traverses these rejections based on the amendments to the claims and the arguments below.

The Applicants respectfully submit that Kusano et al. in combination with Jaishima et al. do not disclose, teach, or suggest all of the above claimed features. Although the combination discloses computer assisted equipment receiving video information (Jaishima et al.) and providing a user with a user interface for consumer electronic devices (Kusano et al.), the combination does not disclose all of the Applicant's newly added features. In particular, nowhere in the combined cited references is the Applicant's programming the selectors to use buffered content to perform freeze frame and instant replay functions and for displaying pertinent text information on the display while the remote control device receives interface instructions and controls the content. Instead, Kusano et al. merely disclose a user interface operated by an application that organizes data, such as music, received from a web server while Jaishima et al. simply disclose regulating the transmission of media data.

In addition, the user interface in Kusano et al. is one single consistent user interface that is located on the remote computer and not plural user interfaces on the consumer electronic devices (see at least Summary, paragraphs [0006], [0007] and [0064] and FIGS. 1, 2, 5 and 6-7 of Kusano et al.), like the Applicants' claimed invention. For example, Kusano et al. explicitly states that it only uses "one consistent user interface via which a user can control a web-enabled device; store and access locally stored data; and effectively find and access information via the internet and store the acquired information in an integrated manner with locally stored data." (see paragraph [0007] of Kusano et al.). Consequently, unlike the

Applicants' claimed invention, Kusano et al. requires only one consistent user interface as software operating on a central computer and not plural user interfaces that reside and operate on the individual devices.

Further, even though Kusano et al. in combination with Jaishima et al. do not disclose, teach or suggest all of the Applicant's features, Kusano et al. should not be used as a reference because Kusano et al. it teach away from the Applicant's claimed invention. Namely, as argued above, Kusano et al. explicitly require one consistent user interface as software operating on a central computer (see at least paragraph [0007] of Kusano et al.). However, the Applicants' claimed invention uses plural user interfaces that reside on the equipment, and not one consistent user interface that operates as software on a central computer.

Therefore, Kusano et al. teach away since Kusano et al. require one consistent user interface that operates as software on a central computer in direct conflict with the Applicant's claimed invention. Thus, Kusano et al. would be rendered inoperable and unsatisfactory for its intended purpose and would change the principle of operation of the invention if plural user interfaces were used, like the Applicant's claimed invention. As such, this "teaching away" prevents this reference from being used by the Examiner. Tec Air, Inc. v. Denso Mfg. Mich. Inc., 192 F.3d 1353, 52 USPQ2d 1294 (Fed. Cir. 1999). ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984).

Last, the Examiner cannot ignore the teaching away and use references with the benefit of hindsight. It is well-settled in the law that improper hindsight occurs when knowledge and advantages from the Applicant's disclosure is used or words or phrases are arbitrarily picked and chosen from references to recreate the Applicant's invention. Crown Operations International, Ltd. v. Solutia, Inc., 289 F.3d 1367, 62 USPQ2d 1917 (Fed. Cir. 2002). In particular, the combination of elements in a manner that reconstructs the Applicant's invention only with the benefit of hindsight is insufficient to present a prima facie case of obviousness. Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc., 796 F.2d 443, 230 USPQ 416 (Fed. Cir. 1986).

Even if the references in question seem relatively similar "...the opportunity to judge by hindsight is particularly tempting. Hence, the tests of whether to combine references need to be applied rigorously," especially when the Examiner uses a reference that does not explicitly disclose the exact elements of the invention

or teaches away from the Applicant's claimed invention, which is the case here.

McGinley v. Franklin Sports Inc., 60 USPQ 2d 1001, 1008 (Fed. Cir. 2001). Since hindsight cannot be used to support the rejections, the combined cited references cannot render the Applicant's invention obvious and the rejection is improper and should be withdrawn. Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.

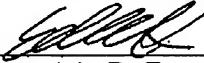
Since the Applicant's claimed elements are not disclosed, taught or suggested by the combined references and because Kusano et al. teach away from the Applicant's invention, Kusano et al. cannot be used as a reference alone or in combination with other references, and hence, the Applicant submits that the rejection should be withdrawn. MPEP 2143.

With regard to the rejection of the dependent claims, because they depend from the above-argued respective independent claims, and they contain additional limitations that are patentably distinguishable over the cited references, these claims are also considered to be patentable (MPEP § 2143.03).

Thus, it is respectfully requested that all of the claims be allowed based on the amendments and arguments. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to Issue. Additionally, in an effort to further the prosecution of the subject application, the Applicants kindly invite the Examiner to telephone the Applicants' attorney at (818) 885-1575 if the Examiner has any questions or concerns. Please note that all correspondence should continue to be directed to:

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Respectfully submitted,
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